

EXHIBIT 5

F I L E D

Clerk of the Superior Court

DEC 31 2008

By: S. WEAVER, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

KARON AND L.B. CHIP EDLESON, On
Behalf of Themselves and All Others Similarly
Situating,,

Plaintiffs,

vs.

AMERICAN HOME SHIELD OF
CALIFORNIA, INC., AMERICAN HOME
SHIELD CORPORATION, THE SERVICE
MASTER COMPANY AND DOES 1-20,,

Defendants.

CASE NO. 37-2007-00071725-CU-BT-CTL

**~~(PROPOSED)~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

JUDGE: The Hon. Steven R. Denton
DEPT. 73

Action Filed: 07/24/07

WHEREAS, a putative nationwide class action, captioned Karon and L.B. Chip Edleson, on behalf of themselves and all others similarly situated, v. American Home Shield of California, Inc., American Home Shield Corporation, and Does 1 20, No. 37 2007 00071725 CU BT CTL (Superior Court of California, County of San Diego, Steven R. Denton, or his successor, presiding (the "Court")) (the "Action"), is pending before the Court;

WHEREAS, the parties having made application for an order approving the Settlement of this Action, in accordance with the Stipulation of Settlement dated as of September 30, 2008 (the "Agreement"), which, together with the Exhibits thereto, collectively included as Exhibit 1 hereto, sets forth the terms and conditions for a proposed Settlement of the Action and for dismissal of the

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

1 Action with prejudice upon the terms and conditions set forth therein; and the Court having read
2 and considered the Agreement and the Exhibits thereto; and

3 WHEREAS, all capitalized terms used but not defined herein shall have the respective
4 meanings ascribed them in the Agreement.

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. Pursuant to § 382 of the California Code of Civil Procedure, the Court
7 preliminarily certifies, for purposes of effectuating the Settlement only, a Class consisting of all
8 Persons in the United States who purchased or were issued any Home Warranty Contract during
9 the Class Period. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates,
10 officers, directors, and employees; Judge Steven R. Denton; and any member of the family of any
11 judge who has jurisdiction over this matter now or in the future.

12 2. With respect to the Class, this Court preliminarily finds and concludes that: (a) the
13 Class Members are so numerous that joinder of all Class Members in the Action is impracticable;
14 (b) there are questions of law and fact common to the Class which predominate over any
15 individual questions; (c) claims of the Named Plaintiffs are typical of the claims of the Class; (d)
16 the Named Plaintiffs and Class Counsel have fairly and adequately represented and protected the
17 interests of all Class Members; and (e) a class action is superior to other methods for the fair and
18 efficient adjudication of the Action.

19 3. This Court preliminarily approves the Agreement and the Settlement set forth
20 therein, subject to further consideration at the Fairness Hearing described below.

21 4. This Court appoints Plaintiffs Karon and L.B. Chip Edleson as Class
22 Representatives.

23 5. This Court appoints Johnson Bottini LLP and Chapin Wheeler LLP as Class
24 Counsel, and Francis A. Bottini, Jr. of Johnson Bottini LLP as Lead Class Counsel.

25 6. The Fairness Hearing shall be held before this Court on 4/24/09, at
26 10:30 a.m./p.m., at the Superior Court of California, County of San Diego, 220 West Broadway,
27 San Diego, CA 92101, to determine whether the Settlement of the Action on the terms and
28 conditions provided for in the Agreement is fair, reasonable, and adequate to the Settlement Class

1 12. Any Settlement Class Member who wishes to present a written objection to the
 2 Agreement may do so in accordance with the procedures outlined in the Class Notice appended to
 3 this Order as Exhibit 2. If the Court grants final approval of the Agreement and enters the Final
 4 Judgment, all Settlement Class Members who have not submitted a written objection to the
 5 Agreement in accordance with the procedures outlined in the Class Notice shall be deemed to have
 6 waived their right to object and shall forever be foreclosed from making any objection to the
 7 fairness or adequacy of the Settlement unless otherwise ordered by the Court.

8 13. Any Settlement Class Member may appear at the Fairness Hearing, at their own
 9 expense, individually or through counsel of their own choice. If they do not enter an appearance,
 10 they will be represented by Class Counsel. Any Settlement Class Member who wishes to appear
 11 individually at the Fairness Hearing must give notice of his or her intent to appear, in accordance
 12 with the procedures outlined in the Agreement and disclosed in the Class Notice. If the Court
 13 grants final approval of the Agreement and enters the Final Judgment, all Settlement Class
 14 Members who have not given notice of their intent to appear individually in accordance with the
 15 procedures outlined in the Agreement and disclosed in the Class Notice shall be deemed to have
 16 waived their right to participate at the Fairness Hearing and shall be foreclosed from individually
 17 participating at the Fairness Hearing unless otherwise ordered by the Court.

18 14. All written objections of any kind, including memoranda or briefs, in opposition to
 19 the Settlement shall be filed and served no later than 25 calendar days prior to the Fairness
 20 Hearing.

21 15. Plaintiffs' fee application shall be filed and served no later than 14 calendar
 22 days prior to the Fairness Hearing.

23 16. All papers including memoranda or briefs in support of the Settlement shall be filed
 24 and served no later than 9 calendar days prior to the Fairness Hearing.

25 17. Neither the Agreement, nor any of its terms or provisions, nor any of the
 26 negotiations or proceedings connected with it, shall be construed as an admission or concession by
 27 Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or
 28 wrongdoing of any kind.

1 12. Any Settlement Class Member who wishes to present a written objection to the
 2 Agreement may do so in accordance with the procedures outlined in the Class Notice appended to
 3 this Order as Exhibit 2. If the Court grants final approval of the Agreement and enters the Final
 4 Judgment, all Settlement Class Members who have not submitted a written objection to the
 5 Agreement in accordance with the procedures outlined in the Class Notice shall be deemed to have
 6 waived their right to object and shall forever be foreclosed from making any objection to the
 7 fairness or adequacy of the Settlement unless otherwise ordered by the Court.

8 13. Any Settlement Class Member may appear at the Fairness Hearing, at their own
 9 expense, individually or through counsel of their own choice. If they do not enter an appearance,
 10 they will be represented by Class Counsel. Any Settlement Class Member who wishes to appear
 11 individually at the Fairness Hearing must give notice of his or her intent to appear, in accordance
 12 with the procedures outlined in the Agreement and disclosed in the Class Notice. If the Court
 13 grants final approval of the Agreement and enters the Final Judgment, all Settlement Class
 14 Members who have not given notice of their intent to appear individually in accordance with the
 15 procedures outlined in the Agreement and disclosed in the Class Notice shall be deemed to have
 16 waived their right to participate at the Fairness Hearing and shall be foreclosed from individually
 17 participating at the Fairness Hearing unless otherwise ordered by the Court.

18 14. All written objections of any kind, including memoranda or briefs, in opposition to
 19 the Settlement shall be filed and served no later than 25 calendar days prior to the Fairness
 20 Hearing.

21 15. Plaintiffs' fee application shall be filed and served no later than 14 calendar
 22 days prior to the Fairness Hearing.

23 16. All papers including memoranda or briefs in support of the Settlement shall be filed
 24 and served no later than 9 calendar days prior to the Fairness Hearing.

25 17. Neither the Agreement, nor any of its terms or provisions, nor any of the
 26 negotiations or proceedings connected with it, shall be construed as an admission or concession by
 27 Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or
 28 wrongdoing of any kind.

1 18. This Court reserves the right to adjourn the date of the Fairness Hearing without
 2 further notice to the Class Members, and retains jurisdiction to consider all further applications
 3 arising out of or connected with the Settlement. The Court may approve the Settlement, with such
 4 modifications as may be agreed to by counsel for Defendants and Class Counsel, without further
 5 notice to the Class.

6 IT IS SO ORDERED.

*This Adjourn is ordered subject to
 modification of the Notice to Class At
 Paragraph V. B. (Page 9, LINE 18) to provide
 "...Warranty claim on any legal basis NOT
 precluded by LAW."*

7
 8 DATED: 12/31/08

Steven R. Denton
 Hon. Steven R. Denton